

PLANNING COMMISSION MINUTES

March 5, 2003

CALL TO ORDER:

Chairman Bob Barnard called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Bob Barnard, Planning Commissioners Gary Bliss, Dan Maks, Vlad Voytilla, and Scott Winter. Planning Commissioners Eric Johansen and Shannon Pogue were excused.

Senior Planner Kevin Snyder, Senior Planner Colin Cooper, Associate Planner Scott Whyte, Assistant Planner Jeff Caines, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Barnard, who presented the format for the meeting.

VISITORS:

Chairman Barnard asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

Senior Planner Kevin Snyder introduced himself, Associate Planner Scott Whyte, and Intern Sarah Reuter, and discussed staff's Memorandum, dated February 26, 2003, with regard to the Land Use Inventory for Future Chapter 20 (Land Uses) Update. He provided a brief update of staff's position and plans concerning this issue, and offered to respond to questions.

1 Observing that he has concerns with regard to vehicular trip genera-
2 tion, Commissioner Maks pointed out that he would be appreciative of
3 staff's consideration of alternate uses as it relates to impact.

4
5 Chairman Barnard expressed concern with creating an appropriate
6 balance of uses throughout the City of Beaverton.

7
8 Expressing his opinion that an appropriate balance could potentially
9 occur at some future point, Mr. Snyder explained how he anticipates
10 this would be achieved.

11
12 **NEW BUSINESS:**

13
14 Chairman Barnard opened the Public Hearing and read the format for
15 Public Hearings. There were no disqualifications of the Planning Com-
16 mission members. No one in the audience challenged the right of any
17 Commissioner to hear any of the agenda items, to participate in the
18 hearing or requested that the hearing be postponed to a later date. He
19 asked if there were any ex parte contact, conflict of interest or disquali-
20 fications in any of the hearings on the agenda. There was no response.

21
22 **PUBLIC HEARING:**

23
24 **A. APP 2003-0004 – APPEAL OF TOUCH OF LIGHT**
25 **MASSAGE HOME OCCUPATION**

26 Appeal of Director's Approval of a Home Occupation 2 Permit
27 (HO 2002-0010 – Touch of Light Massage). The proposed home
28 occupation is for a massage therapy business in a single-family
29 residential dwelling unit located at 13210 SW Haystack Drive.
30 The home occupation proposes to serve only one client at a time,
31 with approximately four to six clients a day, five days a week,
32 with proposed hours of operation from 7:00 a.m. to 8:00 p.m.

33
34 Expressing his appreciation for the public's participation, Chairman
35 Barnard explained the hearing procedure, noting that following staff's
36 presentation, the applicant and appellant would each be permitted 20
37 minutes to present their case, followed by public testimony, which
38 would be limited to three minutes per individual.

39
40 7:15 p.m. – Mr. Whyte left.

41
42 Chairman Barnard described applicable criteria with regard to this
43 specific application, as follows:
44

- 1 1. *The proposal satisfies the threshold requirements for a Home*
- 2 *Occupation Two application.*
- 3 2. *All City application fees related to the application under*
- 4 *consideration by the decision-making authority have been*
- 5 *submitted.*
- 6 3. *The proposed home occupation is being undertaken by an*
- 7 *occupant of the residence.*
- 8 4. *The proposed home occupation is participating in and is*
- 9 *consistent with the City's Business License Program and other*
- 10 *agency licenses as appropriate to the proposed use.*
- 11 5. *The proposed home occupation shall be operated entirely within*
- 12 *the dwelling, a conforming accessory structure, or both. No*
- 13 *exterior storage of materials or equipment shall occur on the*
- 14 *premises.*
- 15 6. *The proposed home occupation will not change the use*
- 16 *classification of the dwelling unit or accessory structures as*
- 17 *determined by the City Building Official applying the State*
- 18 *Building Code.*
- 19 7. *The proposed home occupation and associated storage of*
- 20 *materials and products shall not occupy more than 700 gross*
- 21 *square feet of floor area.*
- 22 8. *The subject property will continue to be used and maintained as*
- 23 *a residence and will conform to all requirements of this and other*
- 24 *City Codes as they pertain to residential property.*
- 25 9. *The home occupation, including deliveries from other businesses,*
- 26 *shall not include the use of tractor trailers, fork lifts, or similar*
- 27 *heavy equipment.*
- 28 10. *There shall be no noise, vibration, smoke, dust, odors, heat or*
- 29 *glare at or beyond the property line resulting from the operation*
- 30 *of the home occupation.*
- 31 11. *There shall be no exterior storage of vehicles of any kind used*
- 32 *from the business except that one commercially licensed vehicle,*
- 33 *which is not larger than a ¾ ton pick-up, passenger van, or other*
- 34 *vehicle of similar size, may be parked outside on the subject*
- 35 *property, providing such parking complies with applicable*
- 36 *parking restrictions.*
- 37 12. *The proposal will not involve storage or distribution of toxic or*
- 38 *flammable materials, spray painting, or spray finishing*
- 39 *operations, or similar activities that involve toxic or flammable*
- 40 *materials which in the judgment of the Fire Marshall pose a*
- 41 *health or safety risk to the residence, its occupants or*
- 42 *surrounding properties.*

1 13. *There is no signage associated with the proposed home*
2 *occupation aside from a name plate as allowed by Section*
3 *60.40.15 of this Code.*

4 14. *Exterior remodeling will not alter the residential character of the*
5 *building.*

6 15. *Applications and documents related to the request, which will*
7 *require further City approval, shall be submitted to the City in*
8 *the proper sequence.*
9

10 Commissioners Maks, Bliss, Winter, and Voytilla and Chairman
11 Barnard all indicated that they had visited and are familiar with the
12 site and had not had contact with any individual(s) with regard to this
13 application and/or appeal.
14

15 Assistant Planner Jeff Caines submitted the Staff Report and briefly
16 discussed the original application and the related appeal. He observed
17 that the appellant had referenced four major issues, as follows:
18

- 19 1. The appellant claims the applicant submitted misleading
20 information stating the property contained a two-car garage,
21 when in fact it may not.
- 22 2. The appellant claims there were alterations to the dwelling unit
23 without proper city permits and approvals.
24

25 Mr. Caines pointed out that the required building permits have been
26 issued for the door, adding that these permits have been finalized and
27 approved by the City.
28

- 29 3. The appellant references his letter dated December 31, 2002
30 stating five reasons for his opposition of the proposed home
31 occupation (Exhibit 2.2 and Exhibit B-11, as follows:
32

- 33 • Disruption of a single-family neighborhood.
- 34 • Up to 120 people visiting the location per month.
- 35 • Safety of children walking to and from the local junior
36 and senior high school during hours of operation.
- 37 • Safety of small children living and playing in the area.
- 38 • Negative impact on property values.
39

- 40 4. The appellant claims the applicant's property is in violation of
41 City Code 3.06.015 (Duty to Repair Sidewalks).
42

43 Mr. Caines pointed out that permits have been acquired and the side-
44 walks have been repaired in front of the applicant's home, as required.

1 Referring to the appeal summary, Mr. Caines explained that the
2 applicant is appealing six elements of the Planning Director's decision,
3 as follows:
4

- 5 1. The appellant claims the proposed home occupation does not
6 meet the intent of the Purpose statement of the Home
7 Occupation section of the Development Code. (Section 40.40.05)
8

9 Referring to the first line of the home occupation Purpose statement
10 (Section 40.40.05), Mr. Caines read, as follows: *"The provisions of*
11 *Home Occupation is to provide recognition of the needs or desires of*
12 *many people to engage in small scale business ventures at home."*
13

- 14 2. The appellant believes the applicant and city staff did not
15 address Threshold 4(a) sufficiently and a Parking Determination
16 application should have been required in order to make positive
17 findings. (Section 40.40.15.2.A.4)
18
- 19 3. The appellant questions if the subject property will continue to
20 be used and maintained as a single-family residence and
21 conform to all the requirements of residential structure as
22 stated in Approval Criterion #8. (Section 40.40.15.2.C.8)
23
- 24 4. The appellant is appealing the intent of Approval Criterion #14,
25 and to what point or extent exterior remodeling does change the
26 residential character of the building and ultimately the
27 neighborhood at large. (Section 40.40.15.2.C.14)
28
- 29 5. The appellant questions if the subject property will continue to
30 be used and maintained as a single-family residence and con-
31 form to all the requirements of a residential structure as stated
32 in Condition of Approval #7. (Page 13 in the Notice of Decision)
33
- 34 6. The appellant questions the intent of Condition of Approval #11,
35 in relation to the exterior door that was added subsequent to the
36 original building of the residential structure. Specifically, to
37 what point or extent exterior remodeling does change the
38 residential character of the building and ultimately the
39 neighborhood at large. (Section 40.40.15.2.C.14)
40

41 Concluding, Mr. Caines stated that staff had concluded that the appeal
42 items raised do not meet approval criteria and recommended that the
43 Planning Commission deny the appeal and uphold the Planning
44 Director's decision approving the application.

1 Referring to page 11 of the Staff Report, which notes that SW
2 Haystack Drive is designated and designed as a public collector street,
3 Commissioner Maks pointed out that the initial report with regard to
4 the Planning Director's decision had indicated that SW Haystack Drive
5 is a local street. Referring to page 1 of the Staff Report, with regard to
6 approval criteria, he mentioned that Development Code Section
7 40.25.15.1.C.1 and 2 is incorrect, noting that the Staff Report should be
8 revised to reference Section 40.40.2.C.
9

10 Observing that the applicant had indicated that she would serve four
11 to six clients on a daily basis, Commissioner Maks pointed out that
12 because the issue is superceded by State law, the City has no
13 jurisdiction over a day care serving up to six children at any one point
14 in time. He mentioned that there are some situations in which a day
15 care is allowed to serve up to 13 children without any approval by the
16 local jurisdiction., expressing his opinion that four to six clients on a
17 daily basis for this application appears to be minimal in comparison.
18

19 Referring to ORS 657.A.280, Mr. Caines explained that the Code states
20 that no person shall operate a child care facility caring for seven or
21 more children without certification, in which case, no certification is
22 required for a child care facility serving six or less children,
23 emphasizing that while up to six children can be served without
24 obtaining any certification, and seven to 13 children requires State
25 certification, no more than 13 children could be served in such a
26 facility without obtaining land use approval.
27

28 Chairman Barnard requested clarification with regard to how many
29 days per week a child care facility is permitted to operate.
30

31 Mr. Caines advised Chairman Barnard that he is not aware
32 of any specification with regard to the number of days per week a child
33 care facility is able to operate.
34

35 Chairman Barnard requested clarification with regard to the potential
36 traffic generated by a day care facility with six children in the morning
37 and six children in the afternoon.
38

39 Mr. Caines indicated that such a facility would generate 24 vehicular
40 trips.
41

42 Commissioner Maks requested clarification with regard to the origin of
43 Condition of Approval No. 8 imposed with the initial Home Occupancy
44 Permit, which addresses the exterior storage of vehicles.

1 Mr. Caines advised Commissioner Maks that the Development Code
2 prohibits the exterior storage of vehicles.

3
4 Mr. Caines discussed corrections to both pages 9 and 10 of the Staff
5 Report, as follows:

6
7 The appellant claims the proposed home occupation does **not**
8 meet the intent of the Purpose statement of the Home
9 Occupation section of the Development Code. (Section 40.40.05).

10
11 Mr. Caines submitted a copy of the current City business license,
12 which is valid until December 31, 2003, and a copy of the license issued
13 by the State Board of Massage Therapists, which is also current, with
14 an expiration date of December 31, 2004.

15
16 Mr. Caines submitted a copy of the Neighbor's Agenda, which had been
17 faxed to him on February 27, 2003, noting that this document is
18 basically a petition expressing concern with three issues, specifically
19 security, compatibility, and real estate values.

20
21 Mr. Caines submitted a copy of a correspondence, dated February 28,
22 2003, from Dean N. Alterman, Attorney representing Lane Powell
23 Spears Lubersky, on behalf of Darrel Riley, with regard to the
24 covenants, conditions and restrictions for the Forest Glen subdivision.
25 He pointed out that it is not the responsibility of the City of Beaverton
26 to provide this enforcement on behalf of any subdivision.

27
28 **APPLICANT:**

29
30 **THERESA KOENIG**, the applicant, described her credentials as a
31 licensed massage therapist with the State of Oregon. She explained
32 that relocating her business in her home is an effort to provide what
33 she considers a more peaceful and serene atmosphere, emphasizing
34 that her goal is to provide relaxation and pain relief as well as improve
35 the health of her clients, who range in age from infants to those more
36 than 80 years of age. She pointed out that many of her clients are
37 addressing issues related to diseases such as arthritis, cancer, and
38 multiple sclerosis, as well as injuries, adding that she also receives
39 physician referrals. Concluding, she mentioned that she is happy to be
40 able to provide a service that benefits others, and offered to respond to
41 questions.

42
43 Commissioner Maks questioned how long Ms. Koenig had resided in
44 her home.

1 Ms. Koenig advised Commissioner Maks that she had lived in her
2 home for 2½ years.

3
4 Observing that Ms. Koenig had provided an excellent summarization
5 of her business operations, Commissioner Voytilla requested
6 clarification with regard to the nature of her clients. Referring to the
7 appellant's Exhibit C-1, specifically a statement relative to the
8 quantity of clients involved, he questioned how many individuals
9 would frequent the business.

10
11 Ms. Koenig informed Commissioner Voytilla that up to 75% of her
12 clientele are repeat customers, adding that they return on a regular
13 basis, depending upon the client, weekly, monthly, or every six weeks.

14
15 **APPELLANT:**

16
17 **DARREL RILEY**, on behalf of the appellants, observed that he is
18 speaking on behalf of himself and nine other appellants, described
19 documentation that has been submitted.

20
21 7:42 p.m. – Mr. Snyder left.

22
23 Mr. Riley discussed what he referred to as several false and misleading
24 presentations by the applicant, as follows:

- 25
26 • *A.1 Home Occupation Submittal Checklist.* Ms. Koenig indi-
27 cates that there will be no exterior alteration to the residence.
- 28 • *A.2 Notice of Director's Decision.* The applicant confirms that
29 there will be no exterior modification to the existing dwelling
30 unit. The room to be used for the home occupation was once a
31 bedroom with an external door.
- 32 • *A.3 Letter dated 12/23/02 from Theresa Koenig to the City of*
33 *Beaverton.* This letter states that there will be no remodeling
34 done to accommodate this business.
- 35 • *A.4 Letter dated 1/17/03 from Code Services to Theresa*
36 *Koenig.* Based on the installation of the door on the house, a
37 Building Permit is required.
- 38 • *A.5 Building Permit Application dated 2/26/03.* This
39 indicates an application to install an exterior door, deck, and
40 sidewalk.
- 41 • *A.6 Letter dated 1/27/03 from Code Services to Theresa*
42 *Koenig.* Inspection of the sidewalk indicates that it had raised
43 over ½ inch in height, requiring that repairs be done.
- 44

1 Mr. Riley acknowledged that while the appellants now understand
2 that a permit has now been issued for the modifications that Ms.
3 Koenig completed to accommodate her home business and has also
4 completed repairs to the sidewalk in the front of her home, they feel
5 that the modifications that were made to the residence do alter the
6 character of the residence and the neighborhood. He further explained
7 that the appellants are disturbed that the application was in part
8 approved with such blatant misrepresentations to the City of
9 Beaverton.

10
11 Mr. Riley referenced the word “character”, which he noted appears in
12 several sections of the Development Code as it pertains to Home
13 Occupations, including approval criteria, facts and findings by the
14 department, and is referenced by staff in the approval for the Touch of
15 Light Home Occupation. Observing that the appellants expect the
16 code to provide a definition for the word “character”, he emphasized
17 that this definition is not available within the City of Beaverton’s
18 Development Code. He pointed out that when he had requested that
19 planners provide a definition of the word “character”, he had been
20 advised that no such definition existed, adding that they had indicated
21 that when the Development Code does not provide a definition, they
22 reference the *Webster’s Third New International Dictionary*. Noting
23 that the planners had provided him with a copy of the applicable page
24 from this dictionary, he pointed out that this is provided in *Exhibit*
25 *B-1*, as follows:

26
27 *A mark, sign, distinctive quality: appearance, outward and visi-*
28 *ble quality or trait: is likely to stress the fact that the device in*
29 *question means or stands for something, is a sign, figure, or phy-*
30 *sical object, the meaning of which is established by convention.*

31
32 Mr. Riley noted that reference to *Exhibit B-2 (Webster’s College*
33 *Dictionary)* defines “convention”, as follows:

34
35 *A meeting or formal assembly, as members or delegates, to*
36 *discuss or act on matters of common concern.*

37
38 Mr. Riley emphasized that this provides the basis for the next portion
39 of his presentation, and mentioned *Exhibit C-1*, which is a copy of an
40 informational South Beaverton Informational Flyer and Survey which
41 was distributed to 200 property owners in the vicinity of the proposed
42 home occupation. He explained the purpose and results of the five
43 questions included in the survey, and discussed *Exhibit C-2*, which
44 provides a summarization of the responses to the survey.

1 Referring to Development Code Section 40.40.05 (Home Occupation),
2 Mr. Riley noted that it is also recognized that such cases, if not
3 carefully regulated, may be incompatible with the purposes of
4 residential districts. He further noted that it is the intent of this
5 section that these uses be allowed so long as they are not in violation of
6 terms of this section and do not alter the residential character of the
7 neighborhood or infringe upon the right of neighboring residents to the
8 peaceful enjoyment of the neighborhood homes or otherwise be
9 detrimental to the community at large. He pointed out that approval
10 criteria listed in Section 40.40.15.C.2.c-14 states that exterior
11 remodeling will not alter the residential character of the building, and
12 mentioned that the Staff Report indicates that the addition of an
13 external door retains the overall residential character of the building.
14

15 Mr. Riley referred to *Exhibits D.1 through D.3*, and described these
16 illustrations indicating the modifications made to the residence to
17 accommodate the proposed home occupation, emphasizing that the
18 appellants believe that the modification to the residence, specifically
19 this new office door, does alter the residential character of the
20 neighborhood, and actually changes this structure into what he
21 referred to as an office duplex within this single-family residential
22 neighborhood and does infringe upon their rights to the peaceful
23 enjoyment of their homes.
24

25 Mr. Riley discussed *Exhibit D.4*, which illustrates his garden area,
26 observing that he is not pleased with the prospect of facing up to eight
27 strangers between the hours of 7:00 a.m. and 8:00 p.m. as he pursues
28 his interest in gardening. He pointed out that prior to this, his back
29 yard had been completely private in all directions, expressing his
30 opinion that this invasion of privacy infringes upon his right to the
31 peaceful enjoyment of his home. Noting that additional screening is
32 not feasible, he explained that he had already constructed a fence to
33 the maximum allowable height of six feet, he mentioned that Section
34 40.65 does provide the right to solar access for his garden area.
35

36 Referring to Ms. Koenig's misrepresentations with regard to parking
37 issues, Mr. Riley mentioned that while she had indicated the presence
38 of a two-car garage, the checklist indicates that parking would be
39 within her driveway, adding that *Exhibit E.1* clearly indicates that a
40 room built within the garage prevents the storage of any vehicles. He
41 stated that staff had not addressed the issue of parking at the
42 proposed home occupation within the Facts and Findings and had not
43 referenced parking within the Conditions of Approval. He emphasized
44 that the appellants believe that the proposed parking in and around

1 the proposed home occupation is a major concern and should be
2 addressed by the Planning Commission.

3
4 Referring to Development Code Section 40.40.15.2.A-4, Mr. Riley noted
5 that not more than a total of four on-site parking spaces for the
6 combined residential and home occupation uses are proposed. He
7 mentioned that staff indicates that approval criteria does not address
8 the issue of location of customer parking while visiting the home
9 occupation.

10
11 Referring to Development Code Section 40.55.5, Mr. Riley pointed out
12 that the Parking Determination Code states that the purpose of this
13 section is to establish the number of parking spaces for uses that do
14 not have a parking ratio requirement listed within the Development
15 Code.

16
17 Mr. Riley referred to staff's Exhibit No. 2.2, observing that Technical
18 Review and Recommendations dated January 8, 2003, specifically
19 Section A.4, states that parking standards, as required in Development
20 Code Section 60.30.10.5 have been met, adding that the primary
21 dwelling unit is required to have a minimum of one parking space per
22 unit. He explained that the dwelling unit had been originally built
23 with a garage capable of storing two vehicles with a driveway allowing
24 an additional two vehicles to be parked at the residence at any one
25 time. He noted that since the applicant states that only one client
26 would visit the residence at any one time, the parking requirement is
27 met, adding that it is reasonable to conclude that two clients would be
28 present on a temporary basis due to adjacent appointments, which
29 means that two separate vehicles could be on site at the same time.
30 He pointed out that the appellants believe that staff's finding that
31 parking is adequate is in error because the parking within the garage
32 is not actually available.

33
34 Referring to *Exhibit E.2*, Mr. Riley noted that the photo illustrates a
35 fairly normal parking situation at the residence, emphasizing that
36 both parking spaces available within the driveway are actually utilized
37 by the residents of the home. He referred to *Exhibit E.3*, observing
38 that the mail box locations prohibit parking in certain areas, adding
39 that *Exhibit E.4* indicates that the frequent parking situation directly
40 across from the subject property would not accommodate eight
41 additional vehicles throughout the day without altering the character
42 of the neighborhood.

43

1 Referring to *Exhibit F*, Mr. Riley noted that the Notice of Director's
2 Decision, Home Occupation 2 (HO 2002-0012 – Krystal Peace CPA
3 Home Occupation), with regard to a home occupation located at 9120
4 SW 130th Avenue, is located approximately ½ mile northeast of the
5 subject property, had been approved approximately 10 days following
6 the Director's approval of the subject home occupation. He pointed out
7 that the CPA home occupation had actually conditioned on-site park-
8 ing for all clients and customers visiting the site, expressing his opin-
9 ion that staff had not reviewed both applications in a uniform manner.

10
11 Mr. Riley stated that the appellants believe that due to the parking
12 situation in and around the subject residence, the home occupation
13 should not be allowed, adding that the appellants also ask that the
14 Planning Commission ensure that similar applications, such as the
15 Touch of Light Home Massage Clinic and the Krystal Peace CPA Home
16 Occupation are uniformly scrutinized, adding that this does not appear
17 to be the case. Concluding, he requested that the Planning
18 Commission protect the residential neighborhood of this single-family
19 neighborhood and the right to the peaceful enjoyment of their homes,
20 and that the Director's decision be reversed and the application denied.

21
22 Commissioner Maks questioned how many homes on SW Haystack
23 Drive have one vehicle in the driveway at 6:00 p.m.

24
25 Mr. Riley advised Commissioner Maks that he does not have this
26 information.

27
28 Commissioner Maks questioned how many homes on SW Haystack
29 Drive have two vehicles in the driveway at 6:00 p.m.

30
31 Mr. Riley advised Commissioner Maks that he does not have this
32 information either.

33
34 Commissioner Maks informed Mr. Riley that he knows how many
35 driveways on SW Haystack Drive have one and two vehicles parked in
36 them at 6:00 p.m.

37
38 Commissioner Maks questioned whether Mr. Riley knows who
39 reported the crack in the sidewalk in front of the applicant's home.

40
41 Mr. Riley advised Commissioner Maks that he had reported the crack
42 in the sidewalk in front of the applicant's home.

43

1 Commissioner Maks informed Mr. Riley that he had personally
2 discovered 13 cracks greater than ½ inch in size on SW Haystack Drive
3 this afternoon, adding that it would be necessary to notify all of the
4 neighbors with regard to necessary repairs. He requested clarification
5 with regard to when the additional door had been installed on the
6 applicant's home.

7
8 Mr. Riley stated that when he is not exactly certain which date this
9 door had been installed it was during the application process, possibly
10 the beginning of November.

11
12 Commissioner Maks pointed out that although he drives this route on
13 a daily basis, he had never been aware of this door until he had
14 received this application. He stated that he has an issue with regard
15 to the comments with regard to changing the character of the neigh-
16 borhood, and advised Mr. Riley that with regard his reference to an
17 office duplex, duplexes are an allowed use within any R-5 or R-7 zoning
18 district. He noted that he does understand concern with regard to the
19 side door being "different", adding that it is necessary to keep in mind
20 that an accessory dwelling structure is an allowed use within any R-5
21 or R-7 zoning district. He explained that while neighbors might not
22 appreciate it, the Development Code provides a homeowner with the
23 right to provide an accessory dwelling unit for a parent or grandparent.
24 He advised Mr. Riley that it is not uncommon for a property owner to
25 make an improvement prior to becoming aware that they need a
26 Building Permit. He questioned how Mr. Riley would feel about the
27 eight vehicular trips that would be generated by this proposal as
28 opposed to a day care that could legally be located in the same location.

29
30 Mr. Riley advised Commissioner Maks that he would not be pleased
31 with the vehicular trips that would be generated by a day care
32 operation, adding that SW Haystack Drive is already a busy street.

33
34 Commissioner Maks mentioned that he had supported Matt and Judy
35 Krill in their effort to obtain speed bumps in the neighborhood, adding
36 that the Ms. Koenig's proposal actually pales in comparison to what
37 could potentially be allowed outright at this location.

38
39 Mr. Riley stated that it is his understanding that SW Haystack Drive
40 is designed to handle up to 500 vehicular trips on a daily basis.

41
42 Commissioner Maks corrected Mr. Riley, observing that as a collector
43 street, SW Haystack Drive is actually designed to handle between

1 5,000 and 7,000 vehicular trips per day. He requested clarification
2 with regard to what type of application Mr. Riley is appealing.

3
4 Mr. Riley stated that he is appealing the Type 2 application for a
5 massage home occupation permit within a single-family residential
6 neighborhood.

7
8 Commissioner Maks questioned why Mr. Riley's documentation
9 identifies the proposal as a massage clinic, emphasizing that the
10 application addresses an appeal of a home occupancy permit, not a
11 massage clinic.

12
13 Mr. Riley advised Commissioner Maks that Ms. Koenig is listed as a
14 massage clinic in the telephone book.

15
16 Commissioner Maks emphasized that the application is for a home
17 occupancy permit, observing that *Exhibit C.1* indicates that the
18 Director had ignored the comments of the property owners and
19 approved the application, and questioned whether Mr. Riley has
20 quantifiable evidence that the Director had ignored the comments of 13
21 individuals, adding that the term ignored implies that the Director had
22 never read these comments and is also rather inflammatory.

23
24 Mr. Riley noted that none of the comments submitted by the property
25 owners had even been referenced within the original approval. He
26 explained that his original response to this approval had been
27 disbelief, that he had actually laughed at the concept of a massage
28 clinic located in a single-family residential neighborhood. Observing
29 that his children are grown, he pointed out that his first concern had
30 been for the children playing in the neighborhood, adding that while
31 these children are accustomed to seeing him and other residents of the
32 neighborhood, he is concerned with how the children would deal with
33 strangers in the neighborhood.

34
35 Commissioner Maks questioned whether Mr. Riley has any
36 quantifiable evidence that massage parlors attract bad people.

37
38 Advising Commissioner Maks that he has no supporting evidence, Mr.
39 Riley pointed out that there is a sort of what he referred to as a gray
40 area over massage parlor, emphasizing that he is certain that Ms.
41 Koenig's intentions are totally legitimate and that she has no hidden
42 agenda.

1 Commissioner Maks assured Mr. Riley that while he may not
2 appreciate whether the Director agreed or disagreed with his
3 submittals, he is certain that they had been carefully read.

4
5 Mr. Riley expressed his opinion that the Director and Planning
6 Commission have the convenient ability to hide between the criteria
7 and the Development Code, adding that this sometimes does not
8 include common sense or respect for what the citizens actually want in
9 their community.

10
11 Commissioner Maks expressed appreciation to Mr. Riley for his
12 testimony, observing that this code that he hides behind is crafted by
13 the citizens through periodic review and involves a great deal of public
14 testimony from many individuals.

15
16 Emphasizing that he has spent many years serving in this capacity
17 and that the Planning Commission is desperate for the input of the
18 public, Commissioner Voytilla pointed out that he takes offense to Mr.
19 Riley's comment with regard to hiding between the criteria and the
20 Development Code. Emphasizing that members of the Planning
21 Commission take their responsibilities very seriously, he noted that
22 the public has an obligation to respond to the pink notices and come
23 and testify with regard to their issues and concerns. He mentioned
24 that he regrets that Mr. Riley does not have a better understanding of
25 the system, noting that there are many opportunities for the public to
26 provide input.

27
28 Mr. Riley stated that he apologizes if he offended Commissioner
29 Voytilla.

30
31 Commissioner Voytilla expressed his appreciation for Mr. Riley's
32 comments with regard to the survey, and questioned how many of the
33 residents within this area actually have home occupations.

34
35 Mr. Riley advised Commissioner Voytilla that he does not have this
36 information.

37
38 Expressing his opinion that it is safe to assume that there are quite a
39 few home occupations within this area, Commissioner Voytilla pointed
40 out that there are five or six home occupations operating in the 14
41 homes within his cul-de-sac.

42
43 Mr. Riley stated that he had not observed any type of nameplates
44 indicating home occupations within this area.

1 Commissioner Voytilla reiterated that while nameplates are not
2 always displayed, it is safe to assume that there are most likely some
3 home occupations operating within the 200 residences targeted in the
4 survey. He requested clarification with regard to several responses to
5 the survey from individuals who do not live within the affected area
6

7 Mr. Riley informed Commissioner Voytilla that some responses were
8 received from property owners who do not live in the area.
9

10 Commissioner Voytilla noted that he finds it interesting that only 25%
11 of those who received the survey actually responded, and questioned
12 whether Mr. Riley has any opinion with regard to why 75% of the
13 residents had not responded.
14

15 Mr. Riley pointed out that while he had never actually attempted to
16 determine why some of the residents had not responded, he had
17 assumed that this is similar to voter turnout.
18

19 Commissioner Voytilla pointed out that any of the residents who
20 shared Mr. Riley's concerns would most likely have responded.
21

22 Mr. Riley explained that he is surprised that more individuals had not
23 attended this hearing, adding that more had indicated that they would
24 attend. He stated that one of the common comments that he had
25 noticed was that with all of the issues people have to deal with today,
26 with the threat of war, unemployment, funding for our children, and
27 other issues, why should it be necessary to have to deal with the threat
28 of this home occupation for this massage clinic as well.
29

30 Emphasizing that the Planning Commission is reviewing the criteria
31 with regard to the appeal of a home occupation permit, Commissioner
32 Voytilla pointed out that this has nothing to do with world issues,
33 adding that it is necessary for Mr. Riley focus on the issue, which
34 happens to be a home occupation, rather than a massage clinic.
35

36 Mr. Riley explained that it is his understanding that a home
37 occupation permit is for the purpose of allowing the operation of small
38 businesses within the home, adding that he does not understand how it
39 had been determined that eight clients per day between the hours of
40 7:00 a.m. and 8:00 p.m. would be appropriate.
41

42 Commissioner Voytilla advised Mr. Riley that the Planning
43 Commission is familiar with what is involved in a home occupation and

1 the permit process, and again questioned whether the appellant is
2 concerned with the home occupation or the use itself.

3

4 Mr. Riley stated that the use has a lot to do with the concern, adding
5 that he is not opposed to a home occupation, specifically one that does
6 not actually bring strangers into the neighborhood.

7

8 Commissioner Voytilla referred to Mr. Riley's concern with providing
9 factual and truthful information, and mentioned *Exhibit C.1*, and
10 questioned how it had been determined that 168 strangers would be
11 coming into the neighborhood on a monthly basis.

12

13 Mr. Riley noted that he had based this information upon eight clients
14 daily five days per week.

15

16 Commissioner Voytilla questioned how Mr. Riley had determined that
17 these individuals are strangers.

18

19 Mr. Riley stated that he has no way of actually knowing that these
20 individuals are strangers.

21

22 Commissioner Voytilla pointed out that this is not factual information,
23 and questioned whether Mr. Riley had actually discussed this with Ms.
24 Koenig.

25

26 Mr. Riley stated that while he had spoken with Ms. Koenig, they had
27 not discussed the issue of strangers.

28

29 Commissioner Voytilla noted that Mr. Riley had made the assumption
30 without discussing the issue with Ms. Koenig, adding that he had
31 elected to distribute this information to the neighborhood.

32

33 Mr. Riley stated that this type of business is open to the public, adding
34 that the applicant had advertised in all of the local telephone
35 directories.

36

37 Commissioner Voytilla advised Mr. Riley that this does not support his
38 statement with regard to 168 strangers coming into the neighborhood
39 on a monthly basis, adding that because Ms. Koenig has indicated that
40 75% of the visits would involve repeat clients, 168 visits would not
41 involve 168 individuals.

42

43 Mr. Riley stated that these individuals would be strangers to him.

44

1 Commissioner Voytilla noted that because 75% of the visits would
2 involve repeat clients, 168 visits would not involve 168 individuals.

3
4 Mr. Riley agreed that if Ms. Koenig's testimony is reliable, 168 visits
5 would not necessarily involve 168 different individuals, adding that
6 much of the information she had provided to the planners had not been
7 reliable.

8
9 Commissioner Voytilla referred to the third question on the survey,
10 which states, as follows:

- 11
12 3. Other than the master bedroom in your home, do any of our
13 additional bedrooms have an exterior door of any kind going
14 directly to the outside?

15
16 and questioned why this question had been included in the survey,
17 specifically how this has any bearing upon this specific application.

18
19 Mr. Riley noted that he had explained in the report, adding that the
20 floor plan of his home is identical to that of Ms. Koenig, adding that as
21 a professional realtor, he is aware that on single-family residences,
22 very few second, third, or fourth bedrooms have outside accesses.

23
24 Observing that he had spent 25 years in the real estate business,
25 Commissioner Voytilla pointed out that he had designed and built
26 literally thousands of homes, adding that outside access to these
27 bedrooms is actually very common.

28
29 Mr. Riley stated that this access is not common in his neighborhood.

30
31 Commissioner Voytilla discussed the possibility of purchasing the
32 home next door and deciding to add a second story, and questioned
33 whether Mr. Riley would appeal his proposal.

34
35 Mr. Riley advised Commissioner Voytilla that he would get to know
36 him as a neighbor, adding that he would not be opposed to any
37 additions that would accommodate his children and relatives.
38 Observing that Ms. Koenig has been a good neighbor, he pointed out
39 that he would not oppose this door if it were not for the purpose of
40 bringing strangers into the neighborhood.

41
42 Commissioner Voytilla noted that Mr. Riley had expressed concern
43 with regard to privacy over the property line, adding that a second
44 story is allowed outright within this zoning district and that windows

1 would be included. He pointed out that this discussion with regard to
2 a potential second story on a home would not have any bearing on his
3 decision with regard to this particular application.
4

5 Commissioner Winter referred to *Exhibit F*, specifically Mr. Riley's
6 statement that staff had omitted approval criteria involving on-site
7 parking for all customers and clients. He questioned the possibility of
8 the residents parking on the street and allowing their customers to
9 park in the driveway.
10

11 Mr. Riley informed Commissioner Winter that *Exhibit F* pertains to
12 the CPA home occupation, rather than the massage occupation. He
13 agreed that although her garage is not available for parking, and the
14 applicant could potentially park her own cars on the street leaving the
15 driveway available for clients, this would create overflow parking into
16 the street.
17

18 Expressing his opinion that Mr. Riley had done a wonderful job of
19 presenting his materials, Commissioner Winter questioned whether he
20 actually knows everybody who walks through his neighborhood.
21

22 Mr. Riley informed Commissioner Winter that he knows more of the
23 people who walk through his neighborhood than he had three or four
24 weeks ago.
25

26 Observing that he is glad that Mr. Riley had become acquainted with
27 his neighbors, Commissioner Winter pointed out that Mr. Riley's gar-
28 den area is located right by the sidewalk of what he considers a very
29 busy street with a tremendous amount of traffic. He expressed his
30 opinion that to automatically equate people with danger may be what
31 he considers a leap of logic, particularly on this busy thoroughfare.
32

33 On question, Mr. Riley informed Commissioner Maks that he had lived
34 in his home since 1996.
35

36 8:30 p.m. to 8:37 p.m. – recess.
37

38 **PUBLIC TESTIMONY:**

39

40 **CAROL McKEAG** expressed her support of Ms. Koenig's application,
41 observing that she has known the applicant for 13 years. Noting that
42 in addition to being one of the strangers who would be visiting the
43 neighborhood, she is a repeat customer and returns every two weeks.
44 She described the applicant as a highly skilled, very well respected,

1 and excellent massage therapist, adding that she provides a
2 therapeutic and medicinal service that is an asset to the community.

3
4 **NINA RONKAS** expressed her support of the applicant's proposal,
5 noting that she has been a client for six years. She pointed out that
6 the applicant has provided relief of stress and backaches, adding that
7 as a cancer patient, Ms. Koenig has provided her with a great service.

8
9 **JANICE HARDWICK** mentioned that she lives on SW Scholls Ferry
10 Road, which she described as a street full of strangers. Observing that
11 she has been a client of Ms. Koenig for approximately 8½ years, she
12 mentioned that she is a cancer patient with a physician's prescription
13 for this therapy, noting that this service helps alleviate pain and
14 nausea. She mentioned that she is also a personal friend of the
15 applicant, emphasizing that many of the clients are also friends who
16 socialize with one another. Noting that she would like to briefly
17 address Mr. Riley's concerns with regard to strangers, she pointed out
18 that we are continually around strangers, in the grocery store and at
19 the movies. Emphasizing that strangers are everywhere, she pointed
20 out that a stranger is a person that we just don't know, adding that
21 maybe people should be friendlier with one another and that she is not
22 willing to spend her life being afraid of strangers.

23
24 **JAYNE KOEHLER** stated that she is also a massage therapist and
25 that while she has worked with Ms. Koenig at her current location at
26 Murrayhill Marketplace, she has moved her practice to her own home.
27 She pointed out that her own practice is going very well in her very
28 quiet neighborhood, adding that she has many clients who actually
29 walk to her home for their sessions. She observed that she has very
30 little traffic, adding that it is not reasonable to anticipate that Ms.
31 Koenig's clients would actually be disruptive to the neighborhood in
32 any way.

33
34 Commissioner Winter questioned how many clients Ms. Koehler serves
35 on a daily basis.

36
37 Ms. Koehler responded that she serves an average of four clients on a
38 daily basis.

39
40 **DAVID ZOGG** pointed out that he is a friend and a client of Ms.
41 Koenig, adding that she basically treats him for the purpose of stress
42 reduction in a weekly basis, adding that the therapy has also been
43 beneficial following a minor stroke. Referring to Mr. Riley's concerns
44 with regard to the newly installed door, he noted that because the

1 fence prevents anyone entering that door from viewing anything except
2 the eaves of his home, his privacy is not compromised and should not
3 be an issue.

4
5 **AL ROBERTSON** introduced himself as the principal broker and
6 manager of Meadows Group Realtors, adding that he is concerned with
7 the potential impact of this proposed home occupation. He expressed
8 his opinion that the character of the neighborhood would change from
9 residential to commercial, adding that it would create a negative
10 perception, which would ultimately impact property values.

11
12 Observing that he lives in the same subdivision as Mr. Robertson,
13 Commissioner Maks noted that he lives several houses from a home
14 occupation operated by Peter Cusick, expressing his opinion that this
15 had not diminished the value of his own property in any way, and
16 pointed out that there had never been any problems selling the homes
17 in this neighborhood.

18
19 **TODD McDANIEL** expressed his opinion that it is necessary to focus
20 on the fact that this issue involves a home occupation permit, adding
21 that what he considers intrinsically wrong with this application is not
22 only the application, but the process and criteria that has been
23 established. He mentioned that he had counted 40 homes on SW
24 Haystack Drive where it intersects with SW Thatcher Drive, adding
25 that there are 30 homes on SW Thatcher Drive, adding that if each of
26 these homes operated a home occupation, there would be a potential
27 for greater than 1,000 vehicles to be parked within that neighborhood.
28 He emphasized that nothing within the permit process prevents this
29 from occurring, adding that this would create a commercial area,
30 rather than a residential area. Referring to Big Brown, he discussed
31 the United Parcel Service (UPS) commercial on television, adding that
32 many home occupations do a great deal of business with Big Brown,
33 involving one or two drops per day and no parking issues. He
34 expressed his opinion that this is what home occupation was
35 structured for, adding that this had not been established for a massage
36 clinic, a CPA office, or a chiropractic practice. Noting that he had
37 participated in the process that resulted in obtaining the speed humps
38 on SW Thatcher Drive, he expressed concern with cut through traffic,
39 adding that he is opposed to this proposal for a home occupation
40 permit.

41
42 Commissioner Maks commended Mr. McDaniel for providing good
43 testimony, adding that it had been right on point, adding that he
44 would like him to participate in future code review.

1 Mr. Caines clarified issues with regard to several concerns, as follows:

- 2
- 3 1. *Reference to Crystal Peace home occupation.* This property is
- 4 located behind another property, with a driveway access
- 5 agreement that provides access to SW 130th Avenue. He pointed
- 6 out that the Conditions of Approval had required on-site parking
- 7 because the only access to the site was through driveway access,
- 8 adding that this requirement had been made to prevent
- 9 customers from parking in front of the neighbor's driveway. He
- 10 further clarified that this on-site parking had not been included
- 11 in this application because the site has direct access to the
- 12 public street.
- 13 2. *Difference between Type 1 and Type 2 Home Occupations.* This
- 14 is a Type 2, which requires a greater analysis and greater level
- 15 of approval criteria and threshold than a Type 1, because clients
- 16 are actually visiting the home. He explained that a Type 1 is
- 17 administrative, with no public notice provided, adding that it is
- 18 conceivable that you may have this type of home occupation
- 19 located next to you without your knowledge.
- 20 3. *Off-Street Parking.* This addresses commercially licensed
- 21 vehicles for the home occupation.
- 22 4. *Were the residences considered in the original decision of the*
- 23 *Director?* He pointed out that within the original Notice of
- 24 Decision from the Director, specifically page 3, the six major
- 25 issues brought up by the residents in the area had been
- 26 addressed. He pointed out that while the Director had reviewed
- 27 and considered all comments, it was necessary for these
- 28 comments to be directly related to the approval criteria, rather
- 29 than whether or not each of the 13 individuals was for or against
- 30 the specific home occupation permit.

31

32 Assistant City Attorney Ted Naemura indicated that he had no

33 comments with regard to this application or appeal.

34

35 The public portion of the Public Hearing was closed.

36

37 Commissioner Voytilla expressed his appreciation of staff's

38 summarization of both the issue and the appeal as well as all

39 testimony received this evening, both in support of and in opposition to

40 the application. Observing that the proposal meets applicable criteria,

41 he stated that he would support a motion to deny the appeal and

42 uphold the Director's approval of the application.

43

1 Commissioner Winter echoed Commissioner Voytilla's comments,
2 adding that the applicant has met all applicable criteria, staff has
3 appropriately addressed issues, and that he would support a motion to
4 deny the appeal and uphold approval of the application.
5

6 Commissioner Maks expressed his opinion that the application meets
7 applicable criteria, adding that the Development Code reflects what
8 type of community is desired. Observing that Mr. Riley had done a
9 great job of addressing criteria, he pointed out that he has become an
10 expert with regard to neighborhood impacts created by day care and
11 bible study, adding that as neighbors, it is necessary to exercise some
12 tolerance and understanding. He mentioned that the community
13 needs home occupations, adding that some are denied based upon
14 issues with regard to impact, traffic, and the number of employees, and
15 explained that the Planning Commission is very aware of what will
16 affect quality of life in residential districts. Noting that the application
17 meets all applicable criteria and would be an asset to the community,
18 he pointed out that while they disagreed, both the applicant and
19 appellant did a good job of presenting evidence.
20

21 Commissioner Bliss expressed his appreciation of tonight's
22 presentations, expressing his opinion that some of the problem had
23 been due to misinterpretation, rather than misrepresentation. He
24 emphasized that it is necessary to address the issue of home
25 occupancy, rather than the type of business, adding that there has
26 been some misconception with regard to massage. Noting that while
27 he is not able to agree on all points, he is appreciative of Mr. Riley's
28 concerns, they do not address applicable criteria for consideration,
29 adding that he would support a motion to deny the appeal and uphold
30 the Director's approval of the applicant's proposal.
31

32 Chairman Barnard stated that he would support a motion for denial of
33 the appeal and approval of the original application. Emphasizing that
34 small business ventures are the heart of America, he observed that
35 some inappropriate character references had been made, adding that
36 he would welcome Ms. Koenig as a neighbor.
37

38 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
39 a motion to **DENY** APP 2003-0004 – Appeal of Touch of Light Massage
40 Home Occupation (HO 2002-0010), based upon the testimony, reports
41 and exhibits, and new evidence presented during the Public Hearing
42 on the matter, and upon the background facts, findings and
43 conclusions found in the Staff Report dated March 5, 2003, as
44 amended.

1 Motion **CARRIED** by the following vote:

2 **AYES:** Maks, Winter, Barnard, Bliss, and Voytilla.

3 **NAYS:** None.

4 **ABSTAIN:** None.

5 **ABSENT:** Johansen and Pogue.

6
7 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
8 a motion to **APPROVE** HO 2002-0010 -- Touch of Light Massage
9 Home Occupation, based upon the testimony, reports and exhibits, and
10 new evidence presented during the Public Hearing on the matter, and
11 upon the background facts, findings and conclusions found in the Staff
12 Report dated March 5, 2003, as amended, and the findings in the
13 original application, dated January 21, 2003.

14
15 Motion **CARRIED** by the following vote:

16
17 **AYES:** Maks, Winter, Barnard, Bliss, and Voytilla.

18 **NAYS:** None.

19 **ABSTAIN:** None.

20 **ABSENT:** Johansen and Pogue.

21
22 **APPROVAL OF MINUTES:**

23
24 Minutes of the meeting of February 5, 2003, submitted. Commissioner
25 Voytilla requested that line 35 of page 16 be amended, as follows:
26 "...Chairman Barnard informed ~~Commissioner~~ Mr. Wooley..."
27 Commissioner Voytilla requested that lines 24 through 26 of page 15
28 be amended, as follows: "...triggers involve the occurrence of specific
29 events, emphasizing that this does not involve timing. The proposal
30 ~~which~~ indicates that an event occurs by a certain time." Commissioner
31 Maks **MOVED** and Commissioner Winter **SECONDED** a motion that
32 the minutes be approved, as amended.

33
34 Motion **CARRIED**, unanimously.

35
36 Minutes of the meeting of February 19, 2003, submitted.
37 Commissioner Voytilla requested that lines 10 through 12 of page 3 be
38 amended, as follows: "...is included ~~with this site~~ as a part of the
39 Cedar Hills Crossing Mall property." Commissioner Voytilla
40 requested that lines 15 through 18 on page 4 be amended, as follows:
41 "...observing that ~~this would be more appropriate in a residential area~~
42 the wording makes no sense." Commissioner Voytilla requested
43 that line 34 on page 10 and line 14 of page 11 be amended, as follows:
44 "...have a minimum caliper ~~and~~ at DBH..." Commissioner Maks

1 **MOVED** and Commissioner Voytilla **SECONDED** a motion that the
2 minutes be approved as amended.

3

4 Motion **CARRIED**, unanimously, with the exception of Commissioner
5 Bliss, who abstained from voting on this issue.

6

7 **MISCELLANEOUS BUSINESS:**

8

9 The meeting adjourned at 9:20 p.m.